JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Division of Consumer Affairs

By: Patricia Schiripo
Deputy Attorney General
(973) 877-1280

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Division of Consumer Affairs

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of FRANCISCO MACHIN, individually, Respondent.	Administrative Action No. NOV 1200030 **CONSENT ORDER**

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection ("Division"), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., the Regulations Governing Home Improvement Contractor Registration, N.J.A.C. 13:45A-17.1 et seq. ("Contractor Registration Regulations"), and the Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. ("Home Improvement Regulations"), have been or are being committed by Francisco Machin. ("Respondent");

WHEREAS Respondent, with a main business address of 218 Williamson Ave, Hillside, New Jersey, 07205, is engaged in the Advertisement and Sale of Home Improvements to Consumers in the State of New Jersey;

WHEREAS the Division's investigation concerned the complaint filed by Consumer in connection with the Home Improvement Contracts entered into with Respondent on December 16, and December 20, 2011 for the latter's performance of Home Improvements ("Investigation");

WHEREAS as a result of the Investigation, the Division alleges that Respondent offered to perform, engaged in and/or attempted to engage in the Sale or performance of Home Improvements in New Jersey, on a date on which he was not registered with the Division;

WHEREAS on July 17, 2012, the Division served Respondent with a Notice of Violation and Offer of Settlement ("NOV"), by Regular Mail, which included the findings of the Investigation and gave Respondent notice and an opportunity to be heard as to the alleged violations;

WHEREAS on July 25, 2012, Respondent attended an Executive Conference with the Division;

WHEREAS the Division and Respondent (collectively, "Parties") have reached an amicable agreement hereby resolving the issues in controversy and concluding this Investigation without the need for further action, and Respondent having voluntarily cooperated with the Investigation and consented to the entry of the within order ("Consent Order") without having admitted any fact or violation of law, and for good cause shown:

IT IS ORDERED AND AGREED as follows:

1. EFFECTIVE DATE

1.1 This Consent Order is effective on the date that it is filed with the Division ("Effective Date").

2. DEFINITIONS

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 "ADR Unit" shall refer to the Alternative Dispute Resolution Unit of the Division.

2.2 "Affected Consumer" shall refer to Consumer

2.3 "Attorney General" shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.4 "Consumer" shall refer to any Person, defined in accordance with N.J.S.A. 56:8-1(d), who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(c), for Sale, defined in accordance with N.J.S.A. 56:8-1(e).

2.5 "Home Improvement" shall be defined: (a) for purposes of the Contractors' Registration Act in accordance with N.J.S.A. 56:8-137; (b) for purposes of the Home Improvement Regulations in accordance with N.J.A.C. 13:45A-16.1A; and (c) for purposes of the Contractor Registration Regulations in accordance with N.J.A.C. 13:45A-17.2.

2.6 "Home Improvement Contract" shall be defined: (a) for purposes of the Contractors' Registration Act in accordance with N.J.S.A. 56:8-137; (b) for purposes of the Home Improvement Regulations in accordance with N.J.A.C. 13:45A-16.1A; and (c) for purposes of the Contractor Registration Regulations in accordance with N.J.A.C. 13:45A-17.2.

2.7 "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.8 "State" shall refer to the State of New Jersey.

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of his business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations.

3.2 Respondent shall not offer to perform, engage in or attempt to engage in the Sale or performance of any Home Improvements in New Jersey, unless and until Respondent is registered with the Division in accordance with the Contractors' Registration Act and the Contractor Registration Regulations.

3.3 Respondent shall provide a copy of his certificate of commercial general liability insurance to consumers for whom he provides "Home Improvement[s]", as required by the Contractors' Registration Act, specifically, N.J.S.A. 56:8-151a(2).

3.4 Respondent shall include in Home Improvement Contracts the "Notice to Consumer" in 10-point bold-face type, as required by the Contractors' Registration Act, specifically, N.J.S.A. 56:8-151b.

3.5 Respondent shall provide signatures of all parties on the contract, as required by the Home Improvement Regulations, specifically, N.J.A.C. 13:45A-16.2(a).

3.6 Respondent shall provide the dates or time period on or within which work is begin or be completed as required by the Home Improvement Regulations, specifically, N.J.A.C. 13:45A-16.2(a)12(iv).

4. AFFECTED CONSUMER COMPLAINT RESOLUTION

4.1 The Affected Consumer's complaint shall be forwarded to the ADR Unit to reach a resolution of the complaint through binding arbitration. Respondent agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Respondent further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify in writing the Affected Consumer of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached hereto as Exhibit A).

4.2 If Respondent fails or refuses to participate in the ADR program, the arbitrator may enter a default against Respondent. Unless otherwise specified in the arbitration award, Respondent shall pay the arbitration award within forty-five (45) days of the arbitrator's decision. Respondent's failure to pay an arbitration award in a timely manner shall constitute a violation of this Consent Order.

4.3 If the Affected Consumer fails or refuses to participate in the ADR program, the Affected Consumer's complaint shall be deemed closed for purposes of this Consent Order.

4.4 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

5. SETTLEMENT PAYMENT

5.1 The Parties have agreed to a settlement of the Investigation in the amount of Two Thousand Five Hundred and 00/100 Dollars ($2,500.00) ("Settlement Payment").

5.2 The Settlement Payment consists of a civil penalty of Two Thousand Five Hundred and 00/100 Dollars ($2,500.00), pursuant to N.J.S.A. 56:8-13.

5.3 Respondent shall make the Settlement Payment in six (6) equal, monthly installments, as follows:

a. Four Hundred Twenty and 00/100 Dollars ($420.00) shall be paid on or before October 1, 2012;

b. Four Hundred Sixteen and 00/100 Dollars ($416.00) shall be paid on or before November 1, 2012;

c. Four Hundred Sixteen and 00/100 Dollars ($416.00) shall be paid on or before December 1, 2012;

d. Four Hundred Sixteen and 00/100 Dollars ($416.00) shall be paid on or before January 1, 2013;

e. Four Hundred Sixteen and 00/100 Dollars ($416.00) shall be paid on or before February 1, 2013; and

f. Four Hundred Sixteen and 00/100 Dollars ($416.00) shall be paid on or before March 1, 2013.

5.4 The Settlement Payment installments referenced in Section 5.3 shall be made by bank check, attorney trust account check, or other guaranteed funds made payable to the "New Jersey Division of Consumer Affairs" and forwarded to:

Case Management Tracking
New Jersey Department of Law and Public Safety
Division of Consumer Affairs
124 Halsey Street
P.O. Box 45025
Newark, New Jersey 07101
Attention: Van Mallet, Supervisor

5.5 Upon making the Settlement Payment installments referenced in Section 5.3, Respondent shall immediately be fully divested of any interest in, or ownership of, the moneys paid. All interest in the moneys, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

6. GENERAL PROVISIONS

6.1 This Consent Order is entered into by the Parties of their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

6.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

6.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

6.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

6.5 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

6.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

6.7 This Consent Order shall be binding upon Respondent as well as his managers, agents, employees, successors and assigns, and any Person through which he may now or hereafter act, as well as any Person who has authority to control or who, in fact, controls and directs his business.

6.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order avoid compliance with this Consent Order.

6.9 This Consent Order is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute or be construed as: (a) an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission by Respondent that any of his acts or practices described in or prohibited by this Consent Order are unfair, or deceptive or violate the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations.

6.10 This Consent Order is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.11 This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

6.12 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

7. REPRESENTATIONS AND WARRANTIES

7.1 The Parties represent and warrant an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective Party.

7.2 Respondent represents and warrants that he has fully read and understands this Consent Order, that he understands the legal consequences involved in signing the Consent Order and that there are no other representations or agreements not stated in writing herein.

7.3 Respondent represents and warrants that he has been advised by the Division to seek legal counsel to review this Consent Order and that he has voluntarily chosen not to do so.

8. RELEASE

8.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment in the manner specified in Section 5, the Division hereby agrees to release Respondent from any and all civil claims or Consumer-related administrative claims, to the extent permitted by State law, which the Division could have brought against Respondent for violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations, prior to the Effective Date arising out of the Investigation as well as the matters addressed in this Consent Order (the "Released Claims").

8.2 Notwithstanding any term of this Consent Order, the following do not comprise Released claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

9. PENALTIES FOR FAILURE TO COMPLY

9.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of Section 3 of this Consent Order or to seek sanctions for violations hereof or both.

9.2 The Parties agree that any future violations of the provisions of Section 3 of this Consent Order, the CFA, the Contractors' Registration Act, the Contractor Registration Regulations and/or the Home Improvement Regulations shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

10. COMPLIANCE WITH ALL LAWS

10.1 Except as provided in this Consent Order, no provision herein shall be construed as:

a. Relieving Respondent of his obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or

b. Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

11. NOTICES UNDER THIS CONSENT ORDER

11.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier

service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Assistant Deputy of Enforcement, Office of Consumer Protection
Division of Consumer Affairs, State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
124 Halsey Street - 7th Floor
P.O. Box 45028
Newark, New Jersey 07101

For Respondent:

Francisco Machin
218 Williamson Ave
Hillside, NJ 07205

IT IS ON THE 20th **DAY OF** November**, 2012 SO ORDERED.**

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: _____
ERIC T. KANEFSKY, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES ADJACENT TO THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: _____ Dated: November 16, 2012
Patricia Schiripo
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 877-1280

FOR RESPONDENT:

FRANCISCO MACHIN

By: _____ Dated: _____, 2012

IT IS ON THE _____ DAY OF 11/9, 2012 SO ORDERED.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By:_____
ERIC T. KANEFSKY, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES ADJACENT TO THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By:_____ Dated:_____, 2012

Patricia Schiripo
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 877-1280

FOR RESPONDENT:

FRANCISCO MACHIN

By:_____ Dated: 11/9, 2012